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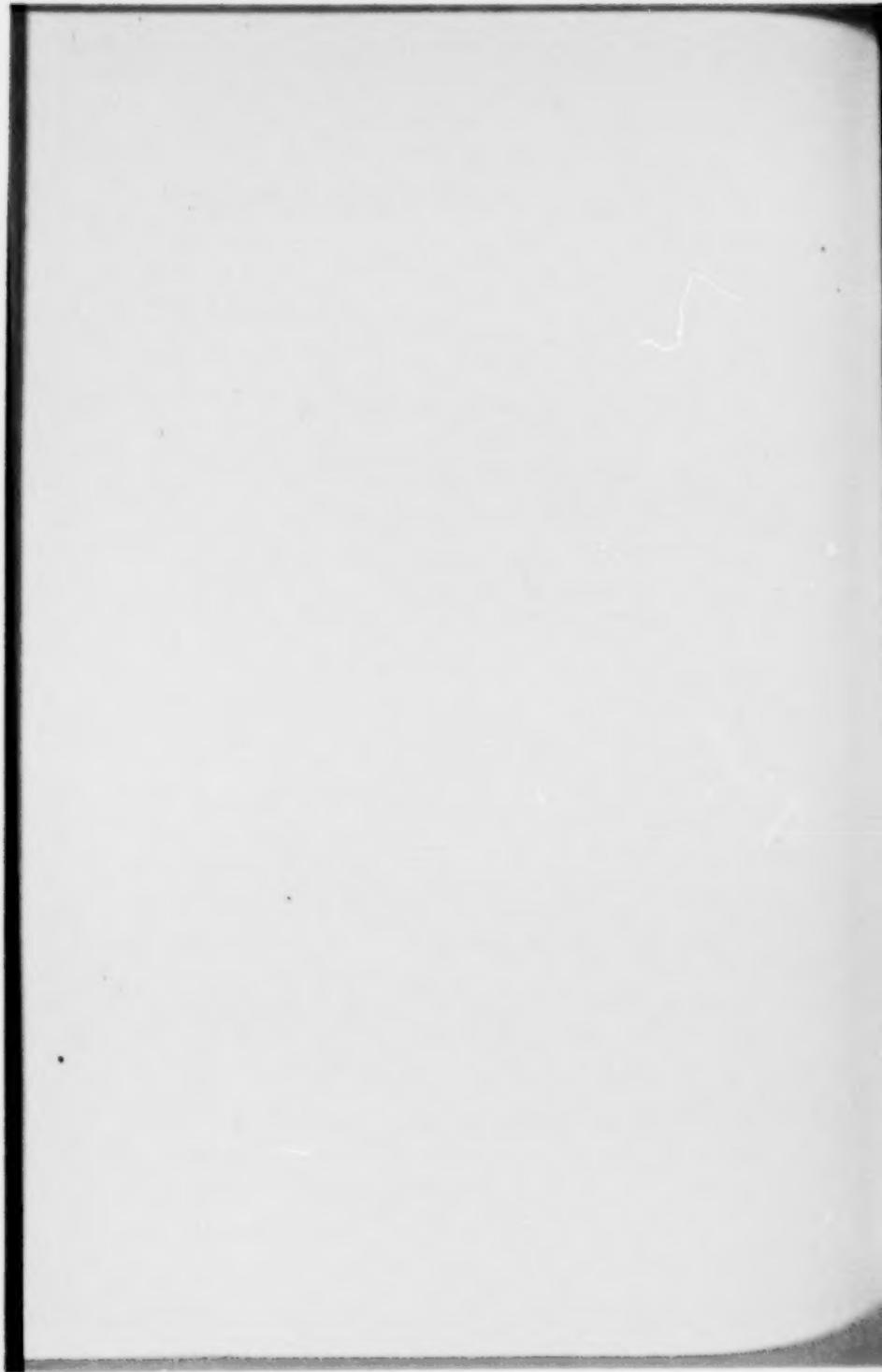
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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 96

LOUIS STOCKSTROM, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 87-95) are reported at 3 T. C. 255. The opinion of the Circuit Court of Appeals (R. 106-119) is reported at 148 F. 2d 491.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 23, 1945. (R. 120.) A petition for rehearing was denied on April 18, 1945. (R. 137.) The petition for a writ of certiorari was filed on May 28, 1945. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Tax Court erred in holding the grantor of several irrevocable long-term family trusts to be taxable, under Section 22 (a) of the Revenue Act of 1938 and the Internal Revenue Code, on the income therefrom where he had named himself as trustee and had retained broad powers of administration over the trust corpus and control over the distribution of trust income.

STATUTES INVOLVED

Internal Revenue Code:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * * * *

(26 U. S. C., Sec. 22.)

The provisions of Section 22 (a) of the Revenue Act of 1938, c. 289, 52 Stat. 447, are identical.

STATEMENT

The facts were found by the Tax Court as stipulated. (R. 19-87, 88.) They were summarized by the Tax Court as follows (R. 88-93):

Petitioner is the father of three adult children (one son and two daughters) and has seven grandchildren. On January 6, 1936, petitioner executed a separate declaration of trust for each of his three children, and a declaration of trust by which he created a separate trust for each of his seven grandchildren. Pursuant to the trust instrument, petitioner transferred to himself as trustee certain securities described in the various trust instruments as constituting the original corpora of the trusts, to which he later added other securities as provided for in such instruments. In all material respects the terms of the trust instruments were the same. (R. 88.)

The powers of the trustee are defined in the trust instruments as follows (R. 88-90):

Item One: The Trustee is authorized to retain, during any part or all of the trust and without liability for loss in so doing, any property at any time received in trust hereunder; to sell, grant options on, lease for a period shorter or longer than the duration of this trust, exchange, transfer or convey any property held hereunder for such consideration and upon such terms as the Trustee may deem reasonable; and to invest and reinvest principal funds of the trust estate in such bonds, common or pre-

ferred stocks, notes secured by first mortgage or first deed of trust on improved real estate, debentures and other class or classes of property, either real or personal, and in such relative proportions as the Trustee may in his discretion determine and select, and in the exercise of such discretion the Trustee shall not be limited to investments of such nature as are now or may at that time be legally authorized for the investment of trust funds; to borrow money for the benefit of the trust estate and mortgage or pledge assets of the trust estate to secure the repayment thereof; to determine whether any money or other assets received hereunder shall be considered part of the principal of the trust estate or part of the income thereof or shall be apportioned between principal and income of the trust estate and the manner and extent of such apportionment; to determine except when otherwise herein elsewhere directed, whether any loss to, expenditure from or funds borrowed for the benefit of the trust estate should be charged to the principal or income of the trust estate or apportioned between principal and income of the trust estate, and the manner and extent of such apportionment; to compromise any claim of or against the trust estate; to vote in person or by proxy any or all of the shares of stock that may at any time belong to the trust estate at corporate meetings and for all corporate purposes; to consent to the reorganization,

consolidation or merger of any corporation and to exchange any of its securities held hereunder for securities issued in connection with such reorganization, consolidation or merger; to pay such assessments, subscriptions or other sums of money as the Trustee may deem expedient for the protection of his interest as holder of any stocks, bonds or other securities or of any other property, real or personal; to exercise with respect to any stocks, bonds or other securities any option which a holder thereof may be entitled to exercise; to purchase for the benefit of the trust estate at any foreclosure sale any real estate or personal property upon which the Trustee may have or hold a mortgage, deed of trust, lien or other encumbrance; to cause to be organized or join in causing to be organized a corporation or corporations in any State or States of the United States of America and to transfer to any such corporation any part or parts of the assets of the trust estate either real or personal and receive in lieu thereof shares of stock in such corporation; to cause in his discretion any property of the trust estate to be registered or held of record in his own name or in the name of his nominee or in the name of the corporate Trustee while there be a corporate co-trustee of this trust or the Trustee may retain said property without changing its record or registered owner, and in any such event the Trustee may or may not in his discretion divulge the trust;

to purchase with assets of this trust estate and for this trust estate from the executors, administrators or trustees of any estate, any stocks, bonds, or any other property either real or personal which may be a part of said estate, each said purchase to be for the then fair market value of the property thus acquired; to make as and when authorized by this trust, distribution of principal from the trust or division of principal within the trust in cash and/or other assets of the trust estate as selected, apportioned and evaluated by the Trustee whose action therein shall be conclusive and binding on all parties in interest; to keep any or all of the trust estate in the State of Missouri or in any other State of the United States of America, and to keep the same in his own custody or in custody of or on deposit with any bank or trust company that he may select in the State of Missouri or in any other State of the United States of America to employ the services of any organization engaged in the business of furnishing investment counsel, or the services of any agent or attorney and to delegate to such organization, agent or attorney the right to execute any power, authority or discretion conferred in this Item One on the Trustee or the right to discharge any administrative function incidental to the administration of the trust and to pay for the services of any such organization, agent or attorney out of the principal or income of the trust estate as

determined by the Trustee; and to do any and every such other act and thing and enter into and carry out any and every such agreement with respect to the trust estate or any part thereof as the Trustee would have the right to do if he were the individual owner thereof and as he may deem best in the interests of the beneficiaries of the trust.

In the trusts petitioner set up for his children it was provided that the trust income during the life of each child should be paid the child, or (in the case of the trust for petitioner's son) the child's spouse, or the child's children (R. 91) "in such proportions as the Trustee may determine, it being the intent of [petitioner] that the Trustee in deciding whether or not to disburse any income to or for the benefit of any beneficiary as above provided, * * * shall be guided by the need * * * of such beneficiary for funds in order that he or she may continue to live in a manner which in the opinion of the Trustee befits the standard of living of such beneficiary. The decision of the Trustee as to the apportionment of income as above provided and as to the date or dates respectively for disbursement of income shall be conclusive and binding upon all parties in interest."

In the trust instrument by which petitioner created seven separate trusts for his grandchildren it was provided that the trust income was to

be (R. 91) "paid to [the grandchild] or accumulated as the Trustee may determine, that is to say, the Trustee shall decide as to the disbursement to [the grandchild] of any current or accumulated income of his estate and as to whether any income of his estate shall be accumulated and the decision of the Trustee in such matter shall be conclusive and binding upon all parties in interest."

The trust instruments also provided that the trustee in his absolute discretion could pay out sums from the principal of the trusts to the beneficiaries if they should on account of illness or infirmity be in need of funds in excess of the trust income. (R. 91.)

The trusts were irrevocable. They were to last at least during the respective lives of the beneficiaries, with remainders over either equitable or free from trust, so that no part of the corpus of the respective trusts could revest in petitioner and no part of the income could be held or accumulated for distribution to petitioner. (R. 91.)

Each of the three trusts contained spendthrift provisions which prohibited the beneficiaries from realizing any financial benefit on their trust interests through assignment, pledge, or other transfer. (R. 91.)

When petitioner, the grantor, ceased to be the trustee of the various trusts, a corporation and an individual beneficiary were to become co-trustees of each trust. Annual statements were to be ren-

dered to each adult beneficiary of the income from his or her trust. (R. 92.)

The property transferred by petitioner to himself as trustee under the various trust instruments has been administered by him in the manner provided for under the trust instruments. (R. 92.)

Petitioner was a stockholder and chairman of the board of directors of American Stove Company. (R. 88.) On October 19, 1937, he was the owner or in control of 6,990 shares of the common stock of that company, and on that date transferred 1,500 of these shares to the trust for his son, Arthur Stockstrom, Sr., and Gladys T. Stockstrom and their descendants. On the same date he also transferred shares of stock of other corporations to the other trusts. Before and after transferring the 1,500 shares of stock of American Stove Company to the trust for Arthur Stockstrom, Sr., and Gladys T. Stockstrom and their descendants, petitioner owned or controlled, in addition to such 1,500 shares, a sufficient number of shares in the company to enable him to elect one member of the board of directors, which consists of fifteen members. Petitioner is not an officer or director of any corporation, the stock of which was transferred to these trusts, except the American Stove Company. (R. 92.)

At all times material, petitioner's three adult children were married and were living separate and apart from petitioner and separate and apart

from each other. None of petitioner's grandchildren lived with him, but each grandchild lived with his or her respective parent. (R. 92.)

During the taxable years practically all of the trust income was distributed to petitioner's children who were beneficiaries under the trusts. However, the income of the trust of which his son, or his son's wife, or his son's children were beneficiaries was paid to his son's wife, and the income of the trust of which his daughter, Jessie S. Russell, was beneficiary was not distributed to the beneficiary in 1938. With regard to the income of the seven trusts created for the benefit of petitioner's grandchildren, no income was distributed to five of the beneficiaries in 1938 and 1939; no income was distributed to four in 1940; and no income was distributed to three in 1941. (R. 92-93.)

At all times material petitioner was worth over a million dollars. (R. 93.)

On these facts, the Tax Court affirmed the Commissioner's determination that the power of the petitioner-grantor-trustee over the distribution of trust income, combined with his extraordinarily broad administrative powers over the trust corpus, rendered the income from the trusts taxable to him under the doctrine of *Helvering v. Clifford*, 309 U. S. 331. (R. 93-96.) The Circuit Court of Appeals for the Eighth Circuit affirmed. (R. 106-119.)

ARGUMENT

The basic principles which govern the disposition of this case were settled by this Court in *Helvering v. Clifford*, 309 U. S. 331. See also *Helvering v. Stuart*, 317 U. S. 154; *Hormel v. Helvering*, 312 U. S. 552; and *Helvering v. Richter*, 312 U. S. 561. Application of the *Clifford* principle to the particular circumstances of this case required the Commissioner and the Tax Court in the first instance, and the court below upon review, to evaluate numerous evidentiary facts bearing upon the extent of the control retained by the grantor over the trust corpus and income, in order to determine whether he remained the owner for all substantial and practical purposes, within the meaning of Section 22 (a) of the Revenue Act of 1938 and of the Internal Revenue Code (*supra*, p. 2). The process of applying the *Clifford* principle to specific factual situations is obviously within the special competence of the Tax Court. *Trust u/w of Birmingham v. Commissioner*, No. 932, last Term, decided June 4, 1945, not yet reported; *Dobson v. Commissioner*, 320 U. S. 489, 501, rehearing denied, 321 U. S. 231; *Helvering v. Clifford*, *supra*, pp. 336, 338; *Harrison v. Schaffner*, 312 U. S. 579, 583-584; *Helvering v. Stuart*, *supra*, pp. 167, 169; see also *Hormel v. Helvering*, *supra*, p. 560; and *Helvering v. Richter*, *supra*, p. 562.

We do not share petitioner's views as to the existence of a conflict in the decisions of the cir-

cuit courts of appeals upon this matter. Since *Commissioner v. Katz*, 139 F. 2d 107 (C. C. A. 7th), and *Commissioner v. Armour*, 125 F. 2d 467 (C. C. A. 7th), were affirmances of the Tax Court's decisions, they represent, at most, instances of differences in emphasis in the Tax Court's rulings in this field. The reversal of the Tax Court's ruling in *Phipps v. Commissioner*, 137 F. 2d 141 (C. C. A. 2d), was based upon the assumption that the local courts would have furnished an effective check upon the taxpayer's control. In the present case, however, the decision of the taxpayer as to the disposition of the income was "conclusive and binding upon all parties in interest" (R. 91), and the Circuit Court of Appeals agreed with the Tax Court that the taxpayer had substantial powers over the disposition of income from the trusts (R. 117). The contention that other decisions of the Tax Court¹ are out of harmony with the decision here was sufficiently answered by the Circuit Court of Appeals. (R. 117-118.)

Neither does the decision below conflict with the recent decision of the Tenth Circuit in *Hall v. Commissioner*, decided July 2, 1945 (1945 C. C. H., par. 9367). The conclusion in the *Hall* case that the grantor was not taxable on the trust

¹ The cases cited are *Ayer v. Commissioner*, 45 B. T. A. 146; *Lowenstein v. Commissioner*, 3 T. C. 1133; *Small v. Commissioner*, 3 T. C. 1142; *Cherry v. Commissioner*, 3 T. C. 1171; and *Banfield v. Commissioner*, 4 T. C. 29.

income resulted from the fact that the reviewing court found no power in the grantor to shift beneficial interests, since any accumulated income was ultimately payable to the primary beneficiary 15 years after the creation of the trust. Here, on the other hand, the grantor could exercise his power over the distribution of income in such a manner as to foreclose completely the receipt of current or accumulated income by the primary beneficiaries. This distinction is an important one (see *Foerderer v. Commissioner*, 141 F. 2d 53 (C. C. A. 3d)) for, as this Court has stated, the power to dispose of income is equivalent to ownership of it and the exercise of that power to procure payment to another is the enjoyment and realization of the income by him who exercises it. *Helvering v. Horst*, 311 U. S. 112, 118; see also *Corliss v. Bowers*, 281 U. S. 376, 378; *Harrison v. Schaffner*, *supra*, p. 581.

The opinion below makes it abundantly clear that this case turns on its own particular circumstances. The opinion is devoted almost entirely to a statement and discussion of the facts. The court below stated its conclusion in these words (R. 116)—

* * * we are not able to say as a matter of law that the Tax Court has erred in appraising petitioner's control of the trust property and of its income as being so substantial in their existing combination as to be fairly equivalent, in direct and indirect

satisfactions to him in the family relationship, to what he previously had and what the property had meant to him, and hence to a retention of its economic ownership for purposes of section 22 (a). See *Dobson v. Commissioner*, 320 U. S. 489, 501 * * *; *Tyson v. Commissioner*, 8 Cir., 146 F. 2d 50, 51; *George v. Commissioner*, 8 Cir., 143 F. 2d 837, 841 [certiorari denied, 323 U. S. 778].

Petitioner's assertion (Br. 12-14) that the decision below cannot be reconciled with *Eisner v. Macomber*, 252 U. S. 189; *Hoeper v. Tax Commission*, 284 U. S. 206; and *Heiner v. Donnan*, 285 U. S. 312, cannot be supported. Here, as in the *Clifford* case, the tax is levied upon income which in substance and reality is that of this taxpayer and not of another. The fact that there was an otherwise valid anticipatory assignment of income is no more material here than it was in the *Clifford* case.²

Implicit in the petition (particularly p. 4, Br. 10-12, 15-18) is an attempt to limit the doctrine of *Helvering v. Clifford* to the particular facts of that case, and to emphasize the difficulties incident to the application of the *Clifford* doctrine to diverse factual situations. But this is to ignore

² See also *Commissioner v. Harmon*, 323 U. S. 44; *Helvering v. Eubank*, 311 U. S. 122; *Helvering v. Horst*, 311 U. S. 112; *Higgins v. Smith*, 308 U. S. 473; *Griffiths v. Commissioner*, 308 U. S. 355; *Burnet v. Leininger*, 285 U. S. 136; *Corliass v. Bowers*, 281 U. S. 376; and *Lucas v. Earl*, 281 U. S. 111.

the nature of the ruling in that case. The *Clifford* case established the general concept of substantial ownership in determining the tax liability of a grantor for trust income, but did not attempt to promulgate a detailed code for deciding particular cases having varying sets of facts. As the Court itself has recognized, not only in its opinion in the *Clifford* case (309 U. S. at 334) but also in later cases (*Harrison v. Schaffner*, 312 U. S. 579, 583; *Helvering v. Stuart*, 317 U. S. 154, 167), the task of translating the *Clifford* doctrine into a specific criterion of tax liability in particular cases is primarily a matter for the Commissioner and the Tax Court.

CONCLUSION

The decision below was correct, and no conflict in decisions is presented. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1945.